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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,194	07/24/2003	Craig William Fellenstein	AUS920030365US1	1807

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EXAMINER
FEARER, MARK D

ART UNIT	PAPER NUMBER
2109	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/626,194	FELLENSTEIN ET AL.
	Examiner	Art Unit	
	Mark D. Fearer	2109	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 April 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

-       Applicant's Amendment filed 04/19/2007 is acknowledged.

-       Claims 1, 11, and 21 have been amended.

-       Claims 1-27 are still pending in the present application.

-       This action is made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1,

148 USPQ 459 (1966), that are applied for establishing a background for

determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at
        issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
        obviousness or nonobviousness.

This application currently names joint inventors. In considering

patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that

the subject matter of the various claims was commonly owned at the time any

inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

and invention dates of each claim that was not commonly owned at the time a

later invention was made in order for the examiner to consider the applicability of

35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35

U.S.C. 103(a).

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Matsliach et al. (US patent 6879994) in view of Monza et al. (US

20040081183 A1) and in further view of Tamir et al. (US 6957390 B2).

Consider claims 1, 11, and 21. Matsliach et al. clearly shows and

discloses a system and method for identifying optimal times for an end user to

contact a target user of a messaging system, comprising: an event monitor to

detect messaging system events and to record the messaging system events in

a database ("Upon detection of a new user event, process 71 continues from

step 76 to step 80 wherein user computer 14 determines what type of user event

has occurred. If the user has asked to change his/her user profile, process 71

continues to step 80a. The updated information is input and then transmitted to

server 10 (step 80a-1). Then the information is stored both locally on user

computer 14 and in a user database of server 10 (step 80a-2), after which

process 71 returns to step 76." Column 13 lines 45-52); a usage processor to

compile statistical usage data from the events in the database ("The information

is processed to determine the current "hot" Internet sites or pages at or near real-

time, the popular sites on a historical basis, i.e., over the past N days or hours,

various usage trends, etc." column 3 lines 40-43); and a usage indicator to

display the target user's statistical usage data on an output device ("This

information can be presented to users in the form of, e.g., a histogram displayed

on the user's screen, and integrated with link maps, directory information, and

other navigation tools." column 3 lines 43-46). However, Matsliach et al. fails to

teach the type of data provided by the messaging system or providing

information for the best time to contact another user. Monza et al. discloses a

messaging system comprising a self learning component that keeps and

monitors historical usage data and uses it to profile users of the system. This

reads on the claimed "... wherein the statistical usage data is adapted to allow

the end user to determine a best time to contact the target user for a messaging

session by providing a plurality of data regarding the target user's ... the target

user's messages sent and received." (("Part of PE component within engine 112

is a self-learning component. The self-learning component enables proactive

outbound contacts to be initiated using the most optimum media type and contact

parameters to ensure the best chance for success of contact and probable

response. For example, if a client like a business partner repeatedly does

business with center 104 then all of his or her available media types, contact

parameters, preferences, rules for etiquette, and normal itinerary, are stored in

HDM within facility 114. Also stored in HDM under the same client ID parameters

are statistical data regarding hit and miss rates of previous proactive outbound

contacts and the result data of those contacts over an extended period of history.

Over time, the system "learns" what the most successful proactive contact media

types are and when the best times are to initiate the contacts. As more data is

compiled more intelligence is gleaned.") paragraph 0068 ("At step 503, if the

media type of the interaction is live voice, interactive text-based, or asynchronous

messaging, the interaction content and any results are stored at step 504. At step

505 the business process ensues, meaning that interaction is still ongoing and

the purpose of the client has yet to be satisfied. It is noted herein that further

routing, re-direction, transfers, and other steps may be part of the process.

Further, the entire interaction chain is captured and recorded as it occurs. It is

further noted that the end of a process does not necessarily mean the closing

interaction of a transaction. The definition of process may include, for example,

post-closing operations that still need to be performed.") paragraph 0160).

Therefore, it would have been obvious to a person of ordinary skill in the art at

the time of invention to incorporate a self learning multimedia communications

environment as taught by Monza et al. with a system for processing and

presenting internet usage information to facilitate user communications as taught

by Matsliach et al. for the purpose of tagging customer preferences. However,

Matliach et al., as modified by Monza et al., fails to teach recording times that

users log in and log out of the system or the average time of a logged in session.

Tamir et al. discloses a system that logs client specifics comprising average

session duration and begin and complete times. This reads on the claimed "...

providing a plurality of data regarding the target user's times for signing in and

signing out, the target user's average time signed on each day, ..." (("Using the

Session Start 304 and Session End 306, the server system can also determine

what times the user and application began and completed the client-server

session. The server system can thereby determine user-specific statistics

including the user session duration and peak time of use, as well as client-

specific statistics including client session duration and peak time of use. The

server system can also determine system-wide user and client statistics including

the average user session duration, average client session duration, user session

peak time of use, and client session peak time of use.") column 9 lines 13-23).

Therefore, it would have been obvious to a person of ordinary skill in the

art at the time of invention to incorporate logging session times as taught by

Tamir et al. with tagging customer preferences as taught by Matsliach et al., as

modified by Monza et al., for the purpose of statistical data analysis.

Consider claims 2, 12, and 22. Matsliach et al., as modified by Monza et

al., and as further modified by Tamir et al., clearly shows and discloses an instant

messaging system ("A variety of different chat or instant-messaging technologies

can be used, ..." column 9 lines 30-31).

Consider claims 3, 13, and 23. Matsliach et al., as modified by Monza et

al., and as further modified by Tamir et al., clearly shows and discloses an e-mail

messaging system ("User demographics: age range (and optionally, the exact

age of the user), gender, nickname, user location (state), spoken languages,

occupation, zodiac sign, family status, a mood of the user, a co-branded

community to which the user belongs and an e-mail address of the user." column

6 lines 49-54).

Consider claims 4, 14, and 24. Matsliach et al., as modified by Monza et

al., and as further modified by Tamir et al., clearly shows and discloses an

electronic bulletin board system ("According to the present invention, a user can

leave one or more "notes" for a particular web page, as if the page contained a

virtual bulletin board." column 4 lines 43-45).

Consider claims 5, 15, and 25. Matsliach et al., as modified by Monza et

al., and as further modified by Tamir et al., clearly shows and discloses a monitor

in which the user has the ability to turn off recording of the user's events ("At step

30, the system continuously monitors whether an active status of the web page

currently being viewed changes (e.g. whether the user switches to a new URL or

opens a new browser window and views a different page). When the active

status of a current page does not change, but the user opens a new browser

window, the process continues directly to step 34, discussed below. However,

when the active status of the current web page changes, the process first

completes step 32 wherein the system toggles the active page timer by, for

example, turning off the timer for the previously viewed page and beginning a

timing of the access to the newly accessed web page. In the alternative, at step

32, the active page time may simply be turned off if the user closes all open

browsers." column 11 lines 4-17).

Consider claims 6, 16, and 26. Matsliach et al., as modified by Monza et

al., and as further modified by Tamir et al., clearly shows and discloses a watch

list ("In addition, a list of "hot" sites can be generated based on popularity and
indexed according to common demographic parameters, such as a user's age,
gender, and occupation. Various hot site lists can be generated according to
topical category, such as business, sports, gaming, etc." column 6 lines 36-41).

Consider claims 7, 17, and 27. Matsliach et al., as modified by Monza et
al., and as further modified by Tamir et al., clearly shows and discloses the event
monitor only recording events matching a type included in the watch list ("Real-
time hot site information is sent to users in response to queries. The query can
be topic specific or global. For a global "all the net" query, all pages that contain
registered users, including those not in the catalog, are scanned to determine the
"hottest" pages." column 6 lines 31-46).

Consider claims 8 and 18. Matsliach et al., as modified by Monza et al.,
and as further modified by Tamir et al., clearly shows and discloses an access
list ("Individual users can compile "buddy lists" of other ICQ users and are
informed when one of those IDs has logged on or off." column 2 lines 37-39).

Consider claims 9 and 19. Matsliach et al., as modified by Monza et al.,
and as further modified by Tamir et al., clearly shows and discloses an access
list ("Next, server 10 determines whether the updated user information includes
additional buddy list members (Step 96). If not, the process 89 continues to step
98 below. If so, process 89 continues to step 97 where server 10 determines the
status of the additional users listed in the new buddy list and transmits the
information to user computer 14, after which process 89 continues to step 98. At
step 98, server 10 transmits a notification to user computer 14 that the updated

user parameters were successfully received and stored." column 16 line 13 –

column 17 line 4).

Consider claims 10 and 20. Matsliach et al., as modified by Monza et al.,

and as further modified by Tamir et al., clearly shows and discloses a usage

indicator saving the target user's statistical usage in a summary file ("Various

other types of information can be returned in accordance with bandwidth

considerations, user preferences, etc., such as the number of users which are

not in an "invisible" status, the number of invisible users in the page, the number

of notes left in the page, the number of users in the site which are not invisible,

and the number of invisible users of the site. The received information is

displayed to the user, preferably in a graphical format (step 28), by the client

software, ..." column 10 lines 43-51).

Response to Arguments

Applicant's arguments filed April 19, 2007 with respect to claims 1-27 have

been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection

presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See

MPEP 706.07(a). Applicant is reminded of the extension of time policy as set

forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this Office Action should be faxed to (571) 273-8300 or mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Mark Fearer whose telephone number is (571)

270-1770. The Examiner can normally be reached on Monday-Thursday from

7:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the

Examiner's supervisor, Rafael Pérez-Gutiérrez can be reached on (571) 272-

7915. The fax phone number for the organization where this application or

proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from

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or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application

or proceeding should be directed to the receptionist/customer service whose

telephone number is (571) 272-2600.

Mark Fearer
M.D.F./mdf
April 30, 2007

RAFAEL PEREZ-GUTIERREZ
SUPERVISORY PATENT EXAMINER